



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

July 23, 1999
AO-99-12

John Vignoni, Treasurer
Committee to Elect Tim Cahill
1501 Furnace Brook Parkway
Quincy, MA 02169

Re: Payment of legal expenses

Dear Mr. Vignoni:

This letter is in response to your June 23, 1999 letter requesting an advisory opinion regarding the payment of legal expenses. The expenses relate to defending against a complaint filed with the State Ethics Commission and a related criminal proceeding in District Court¹ (the complaints) both of which allege a violation of the Conflict of Interest law by candidate Tim Cahill.

You have stated that Tim Cahill (the official) is an incumbent Quincy City Councilor seeking reelection this fall.² The complaints allege that the official violated M.G.L. c. 268A, § 19³ in connection with his participation in the special permit process involving a proposed development in Quincy. You state that the official participated in the process to further his constituent's interests. The complaints allege that the official improperly participated in the deliberations on the developer's application for a special permit despite the fact that the official's parents and in-laws, along with 1700 other Quincy residents, own property abutting the site of the proposed development.

The City Council has consented to represent the official in the District Court proceeding, "but did so after Mr. Cahill reported to them that he or his committee would defray the costs. Indemnification by the City after Mr. Cahill prevails on that case is a possibility."

¹In addition, an action is pending in Land Court which alleges, among other things, that the candidate violated M.G.L. c. 268A, § 19. The committee does not contemplate making expenditures in defense of that action because the City is defending itself and the Councilors in it and a parallel declaratory judgment action initiated by the City.

² He also holds office as the Treasurer of Norfolk County.

³ M.G.L. c. 268A, § 19(a) prohibits a municipal employee from participating in a particular matter in which to his knowledge his immediate family has a financial interest.

Questions

- (1) May the committee make an expenditure to pay for legal expenses in connection with the Ethics Commission review?
- (2) May the committee or the City reimburse the official for legal expenditures made in connection with the District Court action?

Answers

Yes, for both questions.

Discussion

1. Expenditures relating to Ethics Commission investigation

The official's political committee may make expenditures only "for the enhancement of the political future of the candidate . . . so long as such expenditure is not primarily for the candidate's or any other person's personal use . . ." See M.G.L. c. 55, § 6.

Regulations issued by this office pursuant to section 6 prohibit expenditures which "acknowledge any guilt as to the violation of any law." See 970 CMR 2.06(a)(1). In addition, the regulations prohibit "expenses relative to alleged violations of law, other than those which have arisen solely as a function of an individual assuming and performing necessary duties and responsibilities as a candidate or treasurer of a political committee. . ." See 970 CMR 2.06(a)(2). Expenditures relating to civil suits or administrative proceedings, such as an Ethics Commission investigation, are also prohibited, with certain exceptions. Specifically, 970 CMR 2.06(6)(a)(3)(c) exempts "expenses relative to necessary legal action to protect or further the interests of the political committee." Under no circumstances may funds of a political committee be used for any such expenses incurred after conviction of the candidate or treasurer has occurred." See 970 CMR 2.06(6)(a)(2).

This office has advised that a candidate's committee may generally make expenditures in connection with State Ethics Commission investigations, even where such investigations relate to the performance of a candidate's responsibilities as a public official. See AO-95-40 and AO-94-25. As we noted in AO-94-25:

Clearly, the fundamental issues of integrity and reputation are immediately called into question by a Commission investigation. The elected official usually must respond to such issues in the public forum while also responding to the specific requests of the Commission. A successful public response to the investigation, or equally, an unsuccessful response, would certainly have a significant impact on the election campaign of a candidate.

By calling into question the official's reputation and integrity, the Ethics Commission review is inextricably related to the official's political future and defending the action is a "necessary legal action

to protect or further the interests of the political committee.” The committee may therefore properly make expenditures for legal services provided in connection with the review.

2. Expenditures relating to defense in District Court proceeding

(a) Reimbursement by the committee

As noted above, the campaign finance law prohibits the expenditure of campaign funds for any person’s “personal use.” Prior to 1992 the office interpreted “personal use” to include “any non-political uses such as business, *governmental*, legislative, family or social.” See AO-91-06. That interpretation was superseded by an amendment to section 6 which excluded, from the definition of “personal use,” expenditures “relating to the provision of constituent and legislative services or to the opening or maintaining of a legislative district office . . .” See Section 379 of Chapter 133 of the Acts of 1992. The amendment recognized that a successful candidate who becomes an office holder may use campaign funds not only for “political” expenditures, but also for matters which relate to official duties and responsibilities required of the office holder, where such use *also* enhances the candidate’s political future.

The effect of the amendment was to allow the use of campaign funds to pay for “governmental” expenditures. See AO-92-31 (in which the office observed that the previous interpretation “resulted in a somewhat artificial distinction”). See also AO-95-40, a copy of which is enclosed. In AO-95-40 the office concluded that a legislator’s political committee could pay for legal expenses incurred by the legislator in connection with an Ethics Commission investigation and in defending against criminal charges brought under the conflict of interest law. Similarly, Mr. Cahill’s committee may reimburse Mr. Cahill personally for his personal legal expenditures associated with the proceeding.⁴ Reimbursement must comply with the regulations, 970 CMR 2.06(6)(a), summarized above.

(b) Reimbursement by the City

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The court stated that the campaign finance law demonstrates an intent “to assure fairness of elections and the appearance of fairness in the electoral process” and that the law should be interpreted as prohibiting the use of public funds “to advocate a position which certain taxpayers oppose.” 376 Mass. at 193-195. The court described the campaign finance law as “broad regulatory legislation” which applies to elections for candidates as well as ballot questions. 376 Mass. at 183. Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a political party, candidate or ballot question. See IB-91-01.

⁴ In contrast, expenditures, which are not related to a candidate’s role as candidate or office holder, would be considered primarily “personal.” For example, campaign funds could not be used to pay the costs of a real estate closing on a candidate’s residence, or the costs relating to a candidate’s divorce proceeding, since such expenses are primarily “personal.”

The office has not previously considered whether the campaign finance law prohibits a municipality from reimbursing an elected official for personal legal expenses relating to actions taken in the course of his governmental responsibilities where such expenses may also be reimbursed to him by the official's political committee. The office has stated, however, that a municipality may pay legal fees incurred to advise a public employee of his or her responsibilities under the campaign finance law. See AO-91-36. In addition, the office has stated that a city may pay legal fees to determine the legality of an initiative petition affecting the city. See AO-93-36 (stating that "municipalities have traditionally had recourse to the courts to obtain declaratory relief in matters that pertain to cities and towns").

The expenditures described in AO-91-36 and AO-93-36 were not made to promote a particular candidate or ballot question. In AO-93-36 we emphasized that the prohibition described in the Anderson opinion applied in that instance if expenditures made by a public entity would be made "*for the purpose of promoting or opposing*" a ballot question. See M.G.L. c. 55, § 1, which defines "contribution" and "expenditure" as "a contribution or expenditure of money or anything of value . . . *for the purpose of influencing the nomination or election of [an] individual or candidate . . .*" See also Weld v. Director of OCPE, 407 Mass. 761 (1990).

Similarly, the City's payment of some or all of Mr. Cahill's personal legal expenses, where the expenses are incurred to defend against an action alleging a violation of the conflict of interest law *arising from his performance of official responsibilities as an elected official*, would not appear to be a "contribution" or "expenditure" subject to the campaign finance law. The City may, therefore, reimburse Mr. Cahill as an individual for his legal expenses made in connection with the District Court proceeding. The City should not, however, pay Mr. Cahill's political committee for any such related expenses.

To sum up, either the City or the committee may reimburse Mr. Cahill for part or all of his personal legal expenses incurred in connection with the District Court proceedings. Although the committee may pay for or reimburse Mr. Cahill for such expenses, however, the City may not reimburse the committee.

There may be prohibitions on such expenditures under other laws or the local charter. Therefore, you may wish to consult the city solicitor or the Department of Revenue's Division of Local Services. This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan

John Vignoni
July 23, 1999
Page 5

Director